

A number of these 83 judgeships are not even needed. For instance, in the Judiciary Committee we have already made the case that the 12th seat in the D.C. Circuit should not be filled. We have had chief judges in other courts testify that they don't need seats in their courts filled. This further undermines the argument that there is some kind of a vacancy crisis. As a matter of fact, three of these vacant seats were created in 1990 and have never been filled. If they were so necessary, why didn't a Democrat-controlled Senate fill them in the four years it had to do it? I think the answer is self-explanatory, Mr. President. Those who charge that Republicans are practicing partisan politics against Clinton nominees are the same crowd that brought partisan politics to an art form against Reagan and Bush nominees.

Mr. President, I intend to speak on this matter more as we continue to consider nominees and debate the issue of judicial vacancies further. I urge my colleagues on this side of the isle to do the same.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of Frederica Massiah-Jackson.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Let me also note for the record, there is no objection on the part of the minority, at least I have been informed there is no objection, to proceeding with this debate at this time.

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Frederica A. Massiah-Jackson, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mr. HATCH. Mr. President, I rise today to express my strong concerns with respect to President Clinton's nominee to be a U.S. district court judge for the Eastern District of Pennsylvania—Judge Frederica Massiah-Jackson. I voted for this nominee in committee, but on the basis of information that has been presented to the

committee since Judge Massiah-Jackson's hearing, I now have serious reservations about her nomination.

Judge Massiah-Jackson, who currently serves as a State court trial judge in Philadelphia, was nominated by President Clinton on July 31, 1997, to serve in the Eastern District of Pennsylvania. The Judiciary Committee received her completed paperwork on August 15 and began processing her nomination around mid-September. The committee began, in bipartisan fashion, to review what available information there was on her background, her qualifications, and her experience.

The committee's assessment of that information was directed from the outset to serious allegations that were leveled against Judge Massiah-Jackson. In particular, the committee's bipartisan investigative team followed up on allegations that Judge Massiah-Jackson was biased against law enforcement, that she was unduly lenient in sentencing career criminal offenders, and that she lacks proper judicial temperament, as shown with her use of profanity while sitting on the bench.

Despite attempts to investigate seriously these allegations, no one was willing to come forward publicly during the initial investigation with specific and credible evidence or information showing a general bias against law enforcement. In fact, Judge Massiah-Jackson, when confronted with this allegation, had denied having such a bias.

I was particularly troubled by a newspaper account reporting that Judge Massiah-Jackson had identified two undercover officers in open court and warned the spectators to watch out for them. No one, however, came forward to substantiate those charges.

But the committee's investigation did unearth some very troubling information. Judge Massiah-Jackson herself admitted to using profanity at least once while sitting as a judge—she admitted to cursing at a prosecutor in open court; it was not pleasant, and the profanity was not incidental profanity—but she expressed contrition about that event. Indeed, she promised the committee that, if confirmed, she would act appropriately as a Federal district judge.

Now, I take charges of intemperance from the bench seriously. Judges, by their very position, must remain above the fray. They must, by their demeanor and comportment, preside with dignity over their courtrooms and set an example for the attorneys and witnesses to follow. Nevertheless, as a former litigator, I know that in the rough and tumble world of courtroom advocacy that sometimes things can get a bit out of hand. That at least places such untoward remarks in some kind of context. Judge Massiah-Jackson assured the committee that she would conduct herself in an appropriate manner in the future, and that such mistakes as had occurred were early in her tenure on the bench and that she would never allow that to happen again.

The committee's investigation also confirmed that Judge Massiah-Jackson's sentences, while not grossly out of line with those imposed by other State judges, were indeed very lenient on average.

By the time the committee held a hearing on Judge Massiah-Jackson, it was clear to me that she had exercised questionable judgment in a number of cases, that she was softer on crime than I would wish a Federal judge to be, and that there were some serious questions about her ability to preside over a courtroom with the level of decorum that our citizens have the right to expect.

It was clear to me, in a word, that Judge Massiah-Jackson would never be my nominee to the Federal bench. But the Constitution does not vest judicial appointment authority in the Senate. She is President Clinton's nominee. I have never viewed my advise-and-consent responsibilities as an opportunity to second-guess whoever is the President—so long as he sends us nominees who are well qualified to serve and whose views, while perhaps not my own, reflect a commitment to uphold the Constitution and abide by the rule of law.

For that reason, I anticipated that the nominee's responses during her hearing would be extremely important to my own vote. To my mind, those responses would determine whether there was reason to expect that Judge Massiah-Jackson could yet be a credit to the Federal bench.

During her hearing, Judge Massiah-Jackson was questioned extensively about her sentencing record in various cases, she was asked about charges she was antiprossecution, and she was asked to explain the incident in which she had cursed at prosecutors.

After the hearing, members of the committee posed further questions in writing, to which she responded.

In a nutshell, Judge Massiah-Jackson again apologized for her use of profanity in the courtroom and she made every effort to persuade us she has the highest respect for law enforcement and for the difficult job that police officers have to do in our country.

Of particular significance to me, Judge Massiah-Jackson expressly disputed the published press report that indicated she had used her job as a State judge to expose the identities of undercover police officers—in open court, I might add—and to warn the spectators against them. In response to a written question from Senator THURMOND, she flatly denied that such an event had occurred.

On the faith of those assurances and the assurances of those who knew her and know her, and while reviewing the issue very closely, I voted with a majority of my colleagues to report her nomination favorably out of the committee.

I am disappointed to say that with the benefit of hindsight, information has emerged since the Judiciary Committee held its hearings on this particular nominee of President Clinton that strongly suggests to me that she was somewhat less than candid with the committee.

In addition, since the committee's vote, the committee has been virtually deluged with letters from prosecutors and law enforcement agencies in Pennsylvania that document a disturbing pattern of open hostility toward the law enforcement communities. These condemnations have been bipartisan and, in some respects, overwhelming. The Pennsylvania District Attorney's Association, as well as the Philadelphia District Attorney, have come out in opposition to Massiah-Jackson, as have the Pennsylvania Attorney General, the Fraternal Order of Police and the National Association of Police Officers. That is pretty extraordinary. I don't know of any other case where that really has happened, although there may be one or more, even in my experience, but I don't remember any. Moreover, the committee has now received more details about particular rulings by Judge Massiah-Jackson that evidence an inability to deal with law enforcement issues fairly.

First, let me address Judge Massiah-Jackson's possible lack of candor with the Judiciary Committee. During the committee's bipartisan investigation, Judge Massiah-Jackson was questioned about an article that appeared in the local Philadelphia newspaper in 1988 which stated that she had told spectators in the courtroom to take a good look at the undercover officers who are witnesses in the case and to watch themselves. She was asked whether the circumstances described in the article were true. Judge Massiah-Jackson told committee staff she does not recall the incident, but that she did not understand the concern about "outing" the officers if they had already testified. Thereafter, the committee faxed a copy of the article to Judge Massiah-Jackson and asked her to write a letter and comment about the allegations mentioned within the article. Later, the committee received a letter from the nominee that failed to make mention of the incident with the undercover police officers.

Later, at her hearing before the committee, Judge Massiah-Jackson was questioned again about her alleged comments about the undercover police officers. Unfortunately, Judge Massiah-Jackson failed to answer the questions directly and instead she indicated that she respected the role of law enforcement officers.

Dissatisfied by her answers both to the written questions and to the questions at the hearing, Senator THURMOND sent the nominee a follow-up question directly asking her to explain her statement to courtroom spectators to "take a good look at the undercover officers and watch yourselves." In her

written response, the nominee categorically denied ever having made the statement. Her written answer back to the committee was as follows: "I have read the 1988 article and it is inaccurate. I would not and did not make any such statement to the spectators. I have great respect for law enforcement officers who have very difficult jobs and work in dangerous situations."

In the wake of recent developments, however, committee staff, in a bipartisan investigation, was able to interview the two police officers who were mentioned in the news article. Those officers provided written statements to the committee that refute Judge Massiah-Jackson's representations and corroborate the newspaper story. Both Sergeant Rodriguez and his partner, Detective Terrace Jones, an African American, felt that the judge's statement jeopardized their lives if any of the people in the courtroom were friends, family or associates of persons with whom they might negotiate drug buys in the course of their undercover work.

Although I was more than willing to credit Judge Massiah-Jackson's denial of the newspaper account, in the face of statements by the two officers and the newspaper story, her denial now appears to be somewhat less credible.

I would also point out that Judge Massiah-Jackson unequivocally informed the committee during her hearing and during questioning by Senator SPECTER she had never been reversed on a sentencing issue. This fact was important because of concerns that Judge Massiah-Jackson was particularly bent on leniency in sentencing. In fact, nominees are routinely asked, if they are presently judges, to provide the committee all of the cases on which they were reversed.

In response to the committee's request, Judge Massiah-Jackson identified 14 cases in which she had been reversed. None involved a sentencing issue. When asked a second time in writing whether there were any other cases in which she was reversed, Judge Massiah-Jackson reported one additional case. Once again, this case did not involve a sentencing issue.

Since her hearing, however, the committee itself discovered that Judge Massiah-Jackson's statement that she has never been reversed on a sentencing issue is inaccurate. In fact, to date, the committee has found she has been reversed in at least two sentencing cases: *Commonwealth v. Easterling* and *Commonwealth v. Williams*. In both cases, Judge Massiah-Jackson imposed a sentence found to be too lenient by the appellate court.

In *Easterling*, the defendant pled guilty to burglary and criminal conspiracy. Despite a serious prior criminal history, including nine prior adult property convictions and two adult armed robbery convictions, Judge Massiah-Jackson sentenced the defendant to concurrent terms of 1½ to 23 months imprisonment. Her sentence

was 3 years below the standard guidelines and 1 year below even the mitigated guidelines. The Supreme Court found that the downward departure was unreasonable and vacated the sentence.

In *Williams*, the defendant pled guilty to robbery and possession of an instrument of a crime. The defendant, in attempting to take the victim's purse, viciously slashed the victim with a razor. Despite having a prior criminal history, Judge Massiah-Jackson again sentenced the defendant to only 1½ to 23 months' imprisonment and then immediately paroled him. The superior court again held that this sentence was unreasonable—it was substantially below the minimum sentencing guidelines which required a minimum of 4 to 7 years' imprisonment for robbery with a deadly weapon. In addition to finding that Judge Massiah-Jackson had improperly lowered the defendant's offense gravity score, the superior court also found her refusal to apply a deadly weapon enhancement to the razor was clearly erroneous. The court vacated Judge Massiah-Jackson's unreasonable low sentence.

In addition to these reversals for illegal sentences, I would like to provide an example of why I am so concerned about Judge Massiah-Jackson's ability to weigh the facts fairly. Recently, the committee has received numerous cases that were not previously provided by the committee. One of these cases, *Commonwealth v. Smith*, appears to be a particularly egregious case, and I want to tell you about it so you may assess for yourself why this nominee is perceived as being unalterably hostile to crime fighting.

In the early evening of September 28, 1990, a 13-year-old boy was dragged into the bushes on the grounds of a Philadelphia hospital. The assailant raped and sodomized the boy, threatening to kill him. Despite the fact that his face was slashed with a box cutter, the boy managed to escape from his assailant's clutches. Naked and bleeding, he told two female hospital employees who were passing by what had just happened and that his attacker, a man, was still in the bushes. Shortly thereafter, hospital guards arrived and took the boy to the emergency room for treatment.

The two women then saw a man crawling out of the bushes where the boy had told them the attack had occurred. They made eye contact with the man from only 2 feet away. The man jumped to his feet and turned to walk away from the crowd of security guards and bystanders.

One of the women informed the guards of the man's appearance. Remember, the two women, according to the court of appeals' decision, never lost sight of the man until after he was apprehended by police just 2 minutes after they spotted him crawling out of the bushes where the young boy said he was.

A Philadelphia police officer arrived on the scene within seconds of receiving a police radio call of a "rape in progress." The officer stopped the man and told him he was investigating a radio call of a rape. The man said that he had not raped anyone. When the security guards and witnesses told the officer that the man had just raped a young boy, the officer handcuffed him and put him in the back of his patrol car.

Moments later, another officer conducted a safety search of the man before placing him in a patrol wagon. He found a box-cutter knife like the one used to cut the boy's face and a rag still wet with blood. The defendant later confessed. Despite the overwhelming evidence in the case, Judge Massiah-Jackson held that the police officer had no probable cause to arrest the man. She suppressed the defendant's statement, the box-cutting knife, the bloody rag and the out-of-court identifications as the fruits of an illegal arrest. I am thankful to say her ruling was appealed and reversed, but I am somewhat surprised President Clinton would still nominate this judge if he was aware of this decision.

It has been noted that by some that, after the case was reversed, the case was assigned to a new judge and the defendant was, I am told, acquitted. This is why it would be advisable to consider holding a hearing at which the nominee can explain her decision in this case. Frankly, notwithstanding the eventual verdict, I fail to see how one could conclude that probable cause to arrest the defendant did not exist.

In recent weeks, the Judiciary Committee has received letters from virtually every law enforcement office in the State of Pennsylvania and several national organizations voicing their opposition to President Clinton's nominee. To date, we have received letters from the Attorney General of Pennsylvania, the Philadelphia National Fraternal Order of Police, the National Association of Police Organizations, the Pennsylvania District Attorneys Association, and letters by numerous district attorneys around the State, including one from Lynn Abraham, district attorney for Philadelphia, who I understand is a Democrat herself. All of these letters express opposition to this nominee's appointment because of her record of hostility to prosecutors, law enforcement and victims of crime.

Now, although it certainly would have been beneficial to the committee if we had this information before Judge Massiah-Jackson's hearing, we certainly cannot turn a blind eye to the facts. We ought to just make it clear that this committee, in a bipartisan way, takes these judgeship nominations very seriously. We continue to investigate right up to the time of confirmation. We are not going to fail to look at matters when we think there may be some legitimacy to them, as may be the case here.

Make no mistake, I take my floor vote on Judge Massiah-Jackson very

seriously. When her candidacy was in the committee, I resolved my serious misgivings about her nomination in her favor, as I often do, if we don't have people who are willing to appear before the committee, willing to give statements that are substantiated rather than unsubstantiated and if the FBI matters also are unsubstantiated, regardless of the accusations. We see in the FBI reports all kinds of accusations from everybody, from responsible citizens to crazies, and we have to look at those things in a bipartisan, decent, honorable way, sift through them, and do the best we can to arrive at the facts and to be fair to the nominees.

While her candidacy was in the committee, like I say, I resolved these serious misgivings I had in her favor because we do not—most of the accusations, all of the accusations, by and large, were unsubstantiated. People were unwilling to come forward and to speak on the record. I am not about to oppose a nominee and cast a shadow over his or her career when all the Committee has to act on are anonymous sources. But now we have people who have been willing to come forward. I wish they had done so before. It would have helped the Committee straighten out this matter.

My decision on the committee was based in large measure on the representations made by the nominee herself, both in answer to the written questions and at her hearing. To the extent that these recent developments called the nominee's statements before the committee under question—and they do—I am obliged to reconsider my vote. After reviewing and considering the information that has recently been provided to the committee by law enforcement officers about her conduct on the bench, her alleged bias against law enforcement, her flawed judicial rulings, and above all, her apparent lack of candor with the committee, I can't in good conscience, based on what is available to me now, continue to give her the benefit of the doubt.

I have the highest personal regard for Senator SPECTER, who has ably promoted her candidacy. I believe, with the same understandings that I have had up until now, but I have serious questions whether Judge Massiah-Jackson is fit for the Federal bench. Senators SPECTER and SANTORUM have suggested that she be given an opportunity to publicly respond to these recent developments. As chairman of the committee, I hope that the Senate can accommodate their request. I am not sure that we will at this point. But I hope that we will. I hope we can give her a hearing. If we decide to have a hearing, I can hold a hearing. And I think I would have the cooperation on the part of the minority in doing so.

Having said that, I also believe that some of my colleagues, who will speak in opposition to the nominee, have a legitimate argument in urging the Senate to vote on this.

In his State of the Union Address, President Clinton challenged the Sen-

ate to "vote on the highly qualified nominees before you, up or down." Since President Clinton's challenge, the Senate has voted to confirm five judicial nominees. One judicial nominee has chosen to withdraw. And Judge Massiah-Jackson's nomination is in serious question due to concerns from the law enforcement community. Today, some of my colleagues are eager to comply with President Clinton's request. And I hope that this year we will be a bit more expeditious in bringing judges up for votes on the floor. If Senators have objections to them, let them raise them here. This is an appropriate place to do it. Above all, it is appropriate to raise them during the hearings that we hold in the Judiciary Committee. But they can also be raised here, and we face those objections if we are for or against these nominees as they come up for a vote.

Mr. President, if I could just have one more sentence, I don't know whether we will have another hearing or not. But I am certainly going to keep my options open on the subject and work with my colleagues from Pennsylvania. I can't believe that all of these people who have suddenly come forth as law enforcement people are not telling the truth. Yet, I do have some information that Judge Massiah-Jackson may have massaged some of the facts herself. And I am very concerned about this. Frankly, I am going to look for guidance here on the floor from a wide variety of people. And let's just hope that we can do what is appropriate here under the circumstances.

I yield the floor at this time.

Mr. LEAHY. Mr. President, if the distinguished Senator from Utah will stay on the floor for a moment on this, I know there are a number of Senators, especially the two distinguished Senators from Pennsylvania, and others who wish to speak. I advise Senators that I am only going to hold the floor for a moment.

I would like to underscore something that the distinguished Senator from Utah said, which is that if this matter does not come to a vote in the next couple of days and stays on the calendar during that time, the distinguished chairman of the Judiciary Committee has the authority to hold further hearings, if he wishes to, even though the matter is here pending on the calendar. It is something that can be done without the direction one way or the other from the Senate as a body.

I would also note that the distinguished chairman and I have a long practice of discussing first privately issues of this nature that may come up so that we can then report back to the individual Members on our side of the aisle where we are going. I know that the distinguished Senator from Utah would do that. I mention this only to say that I do not want in any way to limit anyone's right to speak, but I will reserve any comments that I might make until after the time I have discussed this matter privately with

the Senator from Utah. I will certainly listen to the things that are said by other Senators on the floor. I want to note an agreement with what the Senator from Utah has said, which is, of course, that the committee has the right to hold further hearings while this matter is pending before the Senate. It is not often done. But certainly it could be.

Mr. President, I am about to suggest the absence of a quorum, and I will assure Senators that I will have no objection to having it called off in about 1 minute. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I see other Senators, including the distinguished senior Senator from Pennsylvania, on the floor. I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I think that there may well be an agreement on the basic course in this matter; that is, to have another hearing in the Judiciary Committee after we have reviewed all of the cases presented by the district attorneys, and after we have given Judge Massiah-Jackson an opportunity to reply. Before commenting about the background and history of the case and the actions which have been taken up until now, I would ask for the attention of our distinguished chairman, Senator HATCH.

The PRESIDING OFFICER. The Senate will please come to order.

Mr. SPECTER. Senator HATCH has cited the case of Commonwealth v. Smith, and noted Judge Massiah-Jackson's judgments in the matter. And I just wanted to inquire of my distinguished colleague, if I could have Senator HATCH's attention, does my distinguished colleague know that when the case came up on retrial before a different judge that the defendant Smith was found not guilty?

Mr. HATCH. I understand this to be the case. As I noted, the record as of today is unclear on a number of these issues. The Department of Justice is still reviewing some of these cases. But the fact that the defendant was eventually acquitted does not excuse the fact that she was reversed on appeal, that we only learned of this case last week, and that there certainly appeared to be probable cause to arrest him.

Mr. SPECTER. The Senator from Utah has commented about two cases where there were sentences below the guidelines. I ask my colleague from Utah if he knew in the case of Commonwealth v. Earnest Smith, January term, 1986, 0144-0146 that Judge Massiah-Jackson was reversed for

handing out a sentence which was too tough or long under the sentencing guidelines? I would be interested to know if the Senator knew as opposed to the staff knowing, if it please.

Mr. HATCH. I am aware that she may have handed down some tough sentences as well.

Mr. SPECTER. I raise those two points on specific matters cited by the distinguished chairman because there is a great deal which has to be analyzed. I am in total agreement with Senator HATCH when he says that there has to be review in a bipartisan manner to take a close look at Judge Massiah-Jackson's qualifications. I consider myself as a juror on the matter to look at the facts and make an impartial, unbiased determination. That is the conclusion which I came to in conjunction with my distinguished colleague from Pennsylvania, Senator SANTORUM, when we had the district attorneys in my office on January 23rd at the invitation of Senator SANTORUM and myself to hear the specifics of their complaints. They said at that time that they had some 50 cases to present on Judge Massiah-Jackson's record, and we responded that we wanted to hear them to see what they were. We hoped that they could be filed within a week, although whatever information they give us at any time, including today, is going to be considered.

This is a very important matter when you have a lifetime Federal court appointment. In fact, 49 cases were submitted on Monday, February 2nd, a week ago yesterday. Those cases are currently under review. I am told that some 15 people are reviewing the cases in the Department of Justice and at the White House to make an analysis of those cases. Judge Massiah-Jackson is now in the process of reviewing those matters to present her views as to why she did what she did in those cases. Once that is concluded, I think that we would have to make an analysis. And the probabilities are high that another hearing will be required, although even that cannot be determined until we take a look at the cases to see what those cases say.

When Senator HATCH outlined the history of this matter, he pointed out that the President submitted the nomination of Judge Massiah-Jackson to the Senate on July 31st of 1997, and that the papers were sent over on August 15th of 1997.

I think it is worth noting, Mr. President, that an arrangement which has been worked out between Senator SANTORUM and myself as the Senators from Pennsylvania and the White House has been that for every three nominees submitted by the President's party, Senator SANTORUM and I would be able to make recommendations as to one judge from the Republican Party. Pennsylvania is the only State which has that arrangement, with the exception of New York which has had that arrangement going back to the 1970's when Senator Javits was the

Senator from New York. Our recommendation was for the Eastern District and for former Pennsylvania State Supreme Court Justice Bruce Kauffman and that was our suggestion. There was no connection with any other nominee. But that arrangement has been carried out, and we expect it to be carried out in the Western District and the Middle District as well.

As Senator HATCH pointed out, when we sought to have information about Judge Massiah-Jackson, none was forthcoming, and there was a reluctance on the part of the Judiciary Committee until further investigation was done.

So Senator SANTORUM and I convened a hearing which was attended by Senator BIDEN, former chairman of the Judiciary Committee, in Philadelphia in early October. We asked all parties to come forward at that time, if they had any information adverse to Judge Massiah-Jackson. Among the witnesses who testified that day, one was a representative of the mayor. And Mayor Rendell has been very forceful in his support of Judge Massiah-Jackson. Mayor Rendell told me that Judge Massiah-Jackson had only one appeal taken and had been sustained on that. Senator HATCH pointed out that apparently is not the case with two other cases having been reviewed here. Mayor Rendell had been District Attorney in Philadelphia, and had subsequently been the Mayor of Philadelphia, been the interim District Attorney until 1985, and then elected Mayor in 1991. So he had some substantial familiarity with Judge Massiah-Jackson's record and was very forceful in his support of Judge Massiah-Jackson.

In any event, after the hearing in Philadelphia in early October, the Judiciary Committee hearing was scheduled in late October. And at that time there was a review of Judge Massiah-Jackson's record at that time. Senator KYL presided. Senator SESSIONS was present, and I was present. Others were present when we went into her record. Subsequent to that hearing, information has come forward from the Pennsylvania District Attorneys Association challenging Judge Massiah-Jackson on a variety of grounds.

When I heard about that, I asked them to come in. January 19 was an inconvenient date, but we did meet on January 23 and then the sequence followed with their having presented their cases which we have in hand as of a week ago yesterday, February 2.

It seems to me that what we need to do is to take a look at those cases. There have been citations against Judge Massiah-Jackson in some cases—and I am not going to go into them at this time—where Judge Massiah-Jackson's judgments were later upheld by the appellate court. The information which has been provided to me is that in 95 cases which were taken on appeal from Judge Massiah-Jackson, she was reversed in 14 cases. Some of those cases were civil as well as criminal.

And I think it important to note that Judge Massiah-Jackson has not sat in criminal cases since 1991.

I think there is agreement by all people who have taken a look at this nomination that a lifetime appointment is a matter of great concern, and I might add that there is a special concern among the district attorneys which has been expressed to me as the result of the decision by Judge Dalzell of the same court, the United States District Court for the Eastern District of Pennsylvania, in a case of *Commonwealth v. Lambert* in Lancaster County, a very serious homicide matter where Judge Dalzell suppressed evidence and said there could not be a retrial. Judge Dalzell has since been reversed by the Court of Appeals for the Third Circuit because the defendant did not exhaust State remedies, and Congressman Pitts and Congressman GEKAS and I have filed legislation which would deny jurisdiction to a Federal judge to order no retrial. Federal judges have the authority to suppress evidence, but I do not think they have the authority to deny retrial. That is a matter for the District Attorney of Lancaster County, something I have some familiarity with, having been DA for 8 years and Assistant District Attorney for 4 years before that. But I think a retrial is a matter for the local District Attorney and the local court. But there is quite a concern among the District Attorneys of Pennsylvania about that action by a Federal judge and a concern as to this nomination, and as citizens, as District Attorneys, they obviously have every right to provide information to the Judiciary Committee on this nominee. I think we have to consider what they have to say. I think we have to consider Judge Massiah-Jackson's responses and then make a determination of the judgment as to whether she should be confirmed or not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I rise to support what seems to be a growing notion on the floor that we not vote on this nominee today, that we take an opportunity for the sake of fairness to give Judge Massiah-Jackson the opportunity to respond to the new information provided by the district attorneys association.

I had to leave the floor for the past few minutes, and I missed most of the remarks of my colleague from Pennsylvania. There were some folks from Core State who wanted to talk about the Core State-First Union merger which is a very important issue in my state. I have been informed that Senator SPECTER went through some of the history of how this nomination came to this point, and I think it serves us well to understand that this information has come out late, that the opportunity was made available to anyone to not only testify in Philadelphia—Senator SPECTER and myself and Senator BIDEN held a hearing in Philadelphia to seek

information, as well as the Judiciary Committee held its hearing. Information could have been provided.

I must admit that for a period of several months prior to the nominee coming up before the committee I was provided a whole bunch of information slid under the door, thrown over the transom, but not information that was in fact stood behind by anybody willing to come forward and say this is what the record indicates and go on the record. It led me to have some very serious concerns about the nominee, but, as Senator HATCH said, I am not going to make a decision on a judge based on information that someone is not willing to stand up in the public light and testify to. Senator SPECTER and I have a joint committee that reviews nominees to be district court judges in Pennsylvania. We both have an equal number of representations—a bipartisan committee. They review the qualifications of a judge, basically resume and other kinds of information. In fact, we ask several questions of the judge, but the judge provides us with the information, and we make a decision based on that information we receive. Judge Massiah-Jackson was approved by that commission. As a result, my policy is to support anybody who gets approved by the commission and then subsequently nominated by the President, to support that nominee's right to come out of committee and come to the floor of the Senate. I have on occasion not too long ago actually held judges and objected to judges being considered by the committee and coming to the floor of the Senate from the State of Pennsylvania because the commission that Senator SPECTER and I have did not find that individual to be qualified. They did find Judge Massiah-Jackson to be qualified. Therefore, I agreed to support her through this process until it reached the floor.

I always left open the opportunity, and still do, to judge as to whether I believe that person should be finally approved by the Senate. In the case of Judge Massiah-Jackson I have very serious concerns that she is in fact going to be a good judge on the Eastern District in Pennsylvania. The charges that have been put forward by the district attorneys association and others I think are very serious. The cases you have heard from Senator HATCH and I know others will be talking about today raise very serious concerns about her respect for law enforcement and her treatment of criminals on both her record as far as a finder of fact in nonjury trials as well as her sentencing as a result of being the finder of fact.

So those things I have very grave concerns about, but having said all that I don't think it is fair for the Senate to move forward and vote on a nominee who has not had the opportunity to respond. I just think that would be unprecedented. These allegations, unfortunately, came in at the last minute, came in almost after the last minute. Judge Massiah-Jackson

actually almost was approved before we left at the end of last year but an objection was raised by two Senators for that approval. Otherwise, she would have been approved by unanimous consent here. Two Senators objected to that approval. It was only after that—in fact not immediately after that because that happened in November. It was 2 months later that this information came out—not 2 months but almost 2 months later that this information came out in a letter from the district attorney of Philadelphia and the neighborhood who voiced her concern and her opposition and obviously the district attorneys association followed suit, or I guess about the same time came forward and said they objected. Subsequently, the fraternal order of police in Philadelphia objected, then the State and then the national. So we had this sort of drip, drip, drip of opposition come out, and I am not questioning whether it is legitimate or not.

These are, obviously, very important substantive issues, but I must admit I am a bit concerned and bothered by the fact it came out at such a late time and in such a, I think, unprofessional fashion. We needed to have this information before the committee when the committee brought her nomination up for confirmation. It was only fair to the judge to do that. And I think these allegations coming out at the time they are have not been fair to her, so I think for the Senate to move forward at this point would be an additional unfairness to this candidate. And so I would encourage my colleague, the Senator from Utah, as well as the Senator from Vermont, Senator LEAHY, to coordinate, whether we have to do it by some formal action in the Senate or preferably by some informal action, that we delay this nominee today, give her the opportunity to come before the Judiciary Committee and have an opportunity to be heard and to respond to these allegations, and they are serious, but I frankly think the more serious the more I feel compelled to give her the opportunity to respond. If they were not so serious, then I would say, well, let's just move forward. But the fact they are serious I think fairness requires her to come before the committee and give her accounting of these fact situations.

And what are they? Well, 50 cases have been brought to our attention here in the last few weeks, 50 cases that have been delivered to us for the last year in which she was a judge. I believe she was a criminal court judge about 7 years. I could be wrong by a half year or so. The last year they went through her records and of 400 some cases, they pulled 50 to show what they believe is conduct that shows a disrespect for the rule of law and a very soft approach on crime.

I must admit I have read the summaries of all 50 of those cases and I am troubled by not all of them but certainly most of them. I also understand that is the synopsis of the district attorneys association as to what the

facts were in the cases, and I would think it is only fair that we hear what the judge's perspective is as to what the facts at least alleged in these summaries are before we make the decision in the Senate.

And so again I think on that count the judge deserves an opportunity. Other information has been brought forward as to her sentencing record. Again, that was somewhat reviewed by the committee. They are taking a little different angle. But these are nuances that I think are important, when it comes to sentencing, she have an opportunity to provide at least some light on the subject.

There is the issue of her acquittal rate. According to the district attorneys association, her acquittal rate is much higher than the average judge. When I say acquittal rate, acquittal when she sits as finder of fact in a nonjury trial—that her rate of acquittal is higher than the average rate of acquittal, on all charges I might add, on all charges of the average judge in Philadelphia. In fact, in the last 4 years it is three times the rate of the average judge in Philadelphia. Again, I am not an expert in the way the court system functions in Philadelphia. I don't know what division of the court she was sitting in. I don't know what that means. Is it maybe as the result of the kind of cases she was hearing? I think those are important questions we have to ask her and, frankly, ask the district attorneys association or the district attorney of Philadelphia at a hearing so we can understand in a little broader picture what the facts are with respect to her acquittal rate.

So those are just some of the things that while on the face of it I must admit are troubling and may continue to be troubling if the response, Judge Massiah-Jackson's responses are not satisfactory, I think the opportunity to respond is imperative.

So I rise to support what hopefully will be the order of the day here which is to give everyone an opportunity to be heard but hopefully then give Judge Massiah-Jackson the opportunity to be heard.

I thank the Chair.

Mr. ASHCROFT. Mr. President, I rise today to speak out in opposition to the nomination of Judge Frederica Massiah-Jackson to be United States District Judge for the Eastern District of Pennsylvania.

We have heard in recent weeks about the so-called vacancy crisis in Federal courts and that the Senate needs to move more quickly in putting the Clinton nominees on the bench.

Well, I for one am more concerned about the quality of nominees than I am about the quantity of nominees. And I am quite sure that we should not respond to a perceived vacancy crisis by giving a lifetime appointment to Frederica Massiah-Jackson.

Before putting this nomination into the context of judges in Washington, and the battles over judges, it is worth

emphasizing the remarkably strong and unified opposition of local law enforcement to this nomination. I have not had a long history of appointments and confirmations here in the Senate—3 years. We have confirmed scores of judges over the course of 3 years. When I was Governor, I had the opportunity to appoint a couple of hundred judges. I appointed all seven members of the supreme court of the State of Missouri. It was a privilege for which I was deeply grateful and I took it very seriously. I thought it very important that we appoint individuals of high quality.

Never in my experience with judicial appointees here in the U.S. Senate or in my time as a Governor, when I appointed several hundred judges in my home State, did I ever see a community of prosecutors step forward and say, "Don't do this." Never before have officers of the court—and prosecutors are officers of the court—felt the necessity to stand up and say, whatever you do, don't confirm this one. Don't appoint this individual.

At noon today I participated in a press conference with national and local law enforcement officials. Other participants included John Morganelli, the district attorney from Northampton County in Pennsylvania, and Ralph Germak, the district attorney in Juniata County of Pennsylvania, and Richard Costello, the president of the Philadelphia Fraternal Order of Police.

I thank them for their willingness to come forward. They came to the news conference to express their opposition to Judge Massiah-Jackson. Interestingly enough, these are not individuals that you would normally expect to publicly express their opposition. District Attorney Morganelli is a Democrat. The nomination of this Democrat judge from Philadelphia was made by a Democrat President. It takes courage to put one's country and the judicial system above one's party. But District Attorney Morganelli chose to do so.

Not only did District Attorney Morganelli come forward, but he also made us aware of District Attorney Lynne Abraham, a Democrat district attorney for Philadelphia. At great political cost to her, Ms. Abraham said this nominee is simply unacceptable. She wrote in a letter addressed to Senator ARLEN SPECTER on January 8 of this year, referring to Judge Massiah-Jackson:

This nominee's judicial service is replete with instances of demonstrated leniency toward criminals, an adversarial attitude toward police, and a disrespect toward prosecutors unmatched by any other present or former jurist with whom I am familiar.

The severity of that statement is matched only by its candor and its courage. It is not easy for a district attorney who has the responsibility of sending prosecutors into that courtroom to come forward with that kind of testimony about a nominee. Most of us would not want to tell the truth about a judge that we were going to have to face over and over and over

again. When District Attorney Morganelli and District Attorney Lynne Abraham come forward, speaking at great personal risk, I do not take that lightly.

When Richard Costello spoke, as the president of the Philadelphia Fraternal Order of Police, he mentioned casually a fact that sent a chill down my spine. He said, "I have been shot twice." And then he related the story of how Judge Massiah-Jackson had ordered undercover policemen to stand up and be recognized in court so that any drug dealers that were there would recognize them if they saw them on the streets. You can imagine what happens to an undercover policeman who is trying to make a drug buy in a case and the drug dealer recognizes the policeman. It could well be that that individual's life would not be worth that much.

I think these individuals who have come forward have a unique blend of personal experience and an unparalleled amount of courage to provide this important information to the U.S. Senate. Nomination fights are difficult. I wish we didn't have all these fights stacked at once. But there is a level of quality that we must expect from individuals who are appointed for life to the Federal bench. If that level of quality does not exist, we must find it elsewhere.

I do not believe that the talent pool of individuals available to be Federal judges in America is shallow. I do not believe that we cannot find moral people who are decent, who have an ability to stay in the middle of a controversy instead of joining one side or the other. I do not believe that the number of trained, skilled lawyers in the Philadelphia, PA community is so low that we have to accept individuals who, according to the district attorney, have an adversarial attitude toward police and disrespect prosecutors. The prosecutors are a part of the court and judicial system. They are entitled to respect. But this nominee is so far below the minimum quality we should expect from a Federal judge that it is tragic. The local law enforcement community is horrified. They are about to be saddled with a judge that they say is the worst.

There is a principle, I think they call it "the Peter Principle," where they kick people upstairs. They keep promoting them because they want to get rid of them. These officials who came forward in this case are not even willing to do that. They understand that this would be a mistake of unparalleled proportions. Washington may seem willing to rubberstamp nominees no matter how unqualified, but these courageous individuals from Philadelphia—and, I might add, the prosecutors association from the State of Pennsylvania, which voted unanimously against this nominee—are not.

I began a minute ago to address the idea of the talent pool, the idea that there are people talented enough and capable enough, and who have the requisite integrity to do a good job. I am

firmly convinced of that. What really troubles me is that the Senate here, now, is talking about maybe we can try and allow this individual to have another hearing, in spite of the fact that the written responses were inadequate, in spite of the fact that the oral responses of this judge, when heard previously, were inadequate, that somehow we could explain away everything. It is as if there is no other option.

I do not think we should try to find a way to make the worst nominee that these folks have ever seen somehow marginally acceptable. We should not be seeking the lowest quality possible in the Federal judiciary. We should be seeking the highest quality possible.

Let me go through some of the objections that the local officials outlined. These happen to be the basis for my own opposition. They are fourfold.

This nominee has shown disrespect for the court by using the English language's most offensive profanity in open court. This is not a subject of debate. This is the subject of court records. You see, there were certain times when this judge's personal court reporter wasn't there to take down the testimony and so a reporter unaccustomed to the language of this judge just filed the report with the offensive language in it, instead of scrubbing the report.

I think for us to say that a judge who uses the crudest profanity that we know in America in a way that demeans the prosecutor in a courtroom is someone that we should not reward by elevating to a lifetime appointment as a Federal judge. It is just that simple. There are some who said there have been apologies and it did not happen very often. I know that there are several cases in court records which show the kind of language that was used. They don't happen to occur in records that were kept by the regular reporter. But, in my judgment, when we have a deep talent pool, why should we say to those who are both in the system and hoping someday to be made Federal judges, or otherwise, that "it doesn't matter what kind of language you use. You just can come up and say you are not going to do it anymore and next time make sure that the reporter scrubs it out of the record." We really need to make a statement that people who disrespect the participants in the judicial system do not belong as Federal judges with lifetime appointments, accountable to no one.

Second, I already mentioned the eloquent testimony of Richard Costello, the president of the Philadelphia Fraternal Order of Police, and how this judge so favoring dope dealers asked undercover police officers to stand up and be identified in court. You know any dope dealer in the court wouldn't have been identified to the police officers, only the police officers to the dope dealers. Here is a judge who recklessly and without regard to the lives of police officials, puts those lives at risk. Officer Costello indicated that he

attended the funerals of seven police officers who had been killed in the line of duty, and he didn't appreciate in the least a judge jeopardizing his fellow officers and his own ability to survive.

Third, this judge demonstrated hostility to prosecutors by suppressing evidence and dismissing charges against criminals. I think the statement by the chairman of the committee with regard to the young man who was raped and the assailant who was captured, identified crawling out of the bushes, was eloquent and powerful. We need judges who will be fair and impartial.

Last but not least, this judge has shown leniency to criminals in sentencing violent criminals to probation only, even when they have been involved in violent crimes on a repeated basis. The judge has used a technique to get to a place for lower sentences. When a person would be charged with a crime and the evidence would come in and show unequivocally that they are guilty of the crime, the judge would find guilt of a lesser included offense so that she could avoid having to impose the minimum sentence and could give a lesser sentence.

There has been a great deal of talk about how there have not been very many appeals. Some have asked, "How many times has she been reversed on appeals?" Let me say this, if you are a criminal you are not going to appeal when the judge turns you loose. You are not going to appeal when the sentence is low. It's very difficult for the prosecutor to appeal.

The Senate cannot confirm this nominee in the face of the strong opposition of the local law enforcement community and on the basis of these four fundamental facts, which are established clearly in the record and which require no additional committee meetings to examine. This judge has been a profane judge, disrespecting prosecutors in the courtroom by referring to them with the lowest level of profanity known in the English language. This judge has recklessly risked the lives of law enforcement officers by making undercover agents reveal who they are to the drug-running community. This judge has demonstrated a hostility toward prosecutors by suppressing evidence unnecessarily and improperly on a repeated basis. And this judge has shown leniency toward criminals by sentencing violent criminals only to probation when the record clearly shows that not only are they violent criminals, but they are violent repeat offenders.

For us to confirm this nominee of this President would be to betray our oath of office to provide advice and consent. For us to confirm this nominee would be the height of arrogance and another example of "Washington knows best," when the folks at the local level know what is right and they have come forward with great courage and inordinate candor to share with the Senate their sentiments about this nominee.

As I mentioned earlier, never in my experiences with the appointment of hundreds of judges have I ever heard from prosecutors like we have in this matter. I've never seen so many stand up, be willing to call a news conference and say, "This kind of candidate is totally unacceptable."

We have heard a great deal in recent weeks about the vacancy crisis in the Federal courts, and we heard it said that Republicans are delaying for the sake of delay. In the case of Massiah-Jackson, I have asked that we debate this issue for the sake of the country and for its courts.

I must confess that this issue is here in the U.S. Senate because of me, because at the close of the last session, I was contacted by no less than a half a dozen different Senators who urged me to let this nomination go through in the dark of night as a matter of unanimous consent. They said, "Let's get it over with; let's just get this done."

Well, that would have been an unfortunate mistake. It would not have allowed these prosecutors and local officials to assemble their briefs. It would not have allowed us to hear the evidence. It would not have allowed us to make good decisions as Members of the U.S. Senate. I resisted those efforts because I felt the nomination raised serious questions, it had serious defects that needed to be examined in the light of day.

When the President comes and asks us to work hard to make sure we do a good job on nominees, I think that is a sincere request, but we should take him at face value. I think these nominees are important enough for us to debate, I think they are important enough for us to decide, and I think we should debate them and decide them in the light of day. There is no need for us to rush this particular item back into a committee room somewhere so something can be done absent the light of day and the scrutiny of the public. It is time for the U.S. Senate to stand up and to say that there are times when the President simply sends us individuals who are unacceptable.

I placed a hold on this nomination and refused to lift it, despite the insistence of a number of Senators, including Senator SPECTER. Some would point to this as unnecessary delay, but we will create an actual crisis, not an imagined one, if we send individuals of this caliber into America's courtrooms.

The Senate has a constitutional obligation to give its advice to the President with respect to judicial nominees, and, in this case, I think we should withhold our consent. I think that the President should have withdrawn this nominee. I can't imagine the President understands the character and nature of this nominee's conduct and wants the Senate to ratify that conduct by sending this nominee into a lifetime appointment. Surely the President is familiar with the litany of disrespect assembled by this nominee in her prior service.

One has to wonder about the vetting process that raises no objections to a nominee like this one. You wonder what kind of job the American Bar Association did. They purport to be the "Good Housekeeping Seal of Approval." I maybe ought to apologize to Good Housekeeping for saying that, because never has a product with the "Good Housekeeping Seal of Approval" fallen so short of its advertised billing.

The truth of the matter is this: The Constitution does not give the American Bar Association or the Justice Department or the White House counsel's office the screening responsibility for Federal judges. The responsibility to screen Federal judges is resident in the U.S. Senate.

Some have said, "Well, we ought to have another committee hearing; we ought to have this; we ought to have that." The U.S. Senate acts as a committee of the whole. When the nomination comes, we are each eligible to evaluate the evidence. We are each charged with the responsibility, duty and opportunity to help make sure that the judicial branch of this country is properly staffed.

The President should withdraw this nomination. The American people deserve better. This nomination sends the wrong message to criminals, suggesting that you can find a friendly judge whose predisposition is adversarial to the prosecutors. That is not my conclusion, that is the conclusion of the prosecution community in Pennsylvania. It sends the wrong message to young people that it doesn't matter what kind of language or respect you accord to the judicial system, you can still be moving up the ladder. Finally, this nomination sends the wrong message to law enforcement that the U.S. Senate doesn't mind promoting someone who puts the lives of law enforcement officials in jeopardy.

I call on the President to withdraw this nomination. If the President refuses to withdraw this nominee, the Senate should vote to reject the nominee now. There is no need for additional proceedings. The President himself says we should have up-or-down votes. He says that there is a backlog. Well, if there is a backlog, why slow the system down with a reexamination of an individual who is unqualified to serve, who will not take this responsibility of the American judiciary to its highest and best, but who, unfortunately, will be found as reinforcing it at its lowest and least?

Nothing will be gained by further delay or sending the nominee back to committee. We know more than enough now, and we know more than enough about the talent pool of lawyers in Philadelphia, PA, to know at least there are some lawyers there that could have a far superior propensity for public service than this nominee who has already soiled a reputation while serving in a public position of responsibility.

We are constantly being told that if there are problems with nominees, we

should bring them up and vote them down. Now is the time to dispose of this nomination. Now is the time to say America deserves better. We deserve better than someone who would profanely abuse the courtroom and the participants in the judicial system.

We deserve someone who would do better than to jeopardize the lives of law enforcement officials.

We deserve a judge who would be fairer than to arbitrarily dismiss evidence so that criminals could go loose unjustifiably.

We deserve someone who knows better than to avoid tough sentences when there are repeat violent offenders against the people of our cities and States.

I believe we have the votes, and after a debate in which people can see the kind of nominees that the President is sending to the Senate, we should vote this nominee down.

I thank the Chair.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, let me take strong offense to what the Senator from Missouri has said in a number of particulars, if I could have his attention. If I could have the attention of the Senator from Missouri. When he makes a comment about betraying the oath of office, I consider that insulting. I have been in this body a little longer than the Senator from Missouri has, and I know what my oath of office is. If the Senator from Missouri thinks that he knows enough, that can be his conclusion. He may be willing to make a judgment without hearing from Judge Massiah-Jackson, but I don't think that is the fair or the appropriate thing to do.

When he talks about why send it back to the Committee, let's debate and decide this in the light of day, he is not only insulting this Senator, he is insulting the Committee—why send it back to the Committee without the scrutiny of the public? If the matter goes back to the Committee, there will be an open hearing, and the Senator from Missouri is on the Committee, although he wasn't present when Judge Massiah-Jackson's hearing came up. The Senator from Missouri has made a good political speech, but I don't think a speech becoming of the United States Senate's decision to hear both sides of the case.

When the Senator from Missouri says that there has been offensive language, that is true, and that was taken up with the Committee and the Committee voted 12 to 6 to report Judge Massiah-Jackson out, notwithstanding that language which was, in fact, offensive, and she apologized for it. I don't know of any Senator on this floor or in this body—maybe there is one, the Senator from Missouri—who has never made offensive comments. But I don't think you would find people in many offices, if any, who would be disquali-

fied from office because they made two offensive comments.

Mr. ASHCROFT. Will the Senator yield?

Mr. SPECTER. No, I won't. When I finish—no, go ahead, I will yield.

Mr. ASHCROFT. I wondered if the Senator had a question of me. You asked that I stay, and I wonder if you had a question. If you do, I will be pleased to answer it.

Mr. SPECTER. No, I do not have a question of you. I would like you to listen to this. If you don't want to listen to Judge Massiah-Jackson, I hope you will listen to a colleague who has something to say about what you just said.

Mr. ASHCROFT. I have thoroughly reviewed the record of Judge Massiah-Jackson.

Mr. SPECTER. Are you aware that the case you referred to involving the rape of a young man was sent back to another judge for trial and that defendant was acquitted?

Mr. ASHCROFT. I have thoroughly reviewed the record of Judge Massiah-Jackson.

Mr. SPECTER. Well, that's an interesting answer to some other question, but the question I just posed to you, are you aware of the fact that defendant was acquitted when he went back for another trial—you talked about the defendant being guilty, are you aware of the fact that he was acquitted?

Mr. ASHCROFT. I am aware of the record of Judge Massiah-Jackson. It was clearly stated by the chairman of the committee.

Mr. SPECTER. Well, then I would suggest—

Mr. ASHCROFT. Mr. President,—

Mr. SPECTER. Mr. President, regular order. I have the floor.

Mr. ASHCROFT. I have the floor.

Mr. SPECTER. I have the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. Mr. President, when I make that comment about the Senator from Missouri saying that he knows the facts, knows the case, he raises four points, and one of them is the rape of this young man, a victim, but he doesn't know that the defendant was acquitted. That does have some bearing. If the scrutiny and the thoroughness of the Senator from Missouri on the balance of the record is as thorough as it was on this case, some may question the basis for his judgments, wanting to come to a vote without having heard the other side of the case.

When the Senator from Missouri comments about endangering police officers, I wonder if the Senator from Missouri knows that those officers were identified because they testified in open court?

And when the Senator from Missouri talks about attending the funerals of seven police officers, this Senator has attended the funerals of a lot more police officers than seven in 4 years as an Assistant District Attorney and 8 years as District Attorney of Philadelphia. It

may be in that capacity that I have some greater knowledge of criminal procedure in that city and what goes on in the courtroom and what happens and whether somebody is entitled to make a reply. Not only attended the funerals of seven police officers, but prosecuted on many occasions their murderers.

When the Senator from Missouri makes a comment about lower sentences, lesser included offenses, he may have a point on that, but that requires an analysis of what was in the case.

I agree with the Senator from Missouri when he talks about the need for a quality evaluation of judges, and I do not believe that we ought to appoint judges for the Federal courts for lifetime appointments without very thorough scrutiny, but I do not think that it advances the cause to vilify or joke about the American Bar Association and the "Good Housekeeping Seal of Approval." The Philadelphia Bar Association is making an analysis and stands behind Judge Massiah-Jackson as her advocate.

When the Senator from Missouri says that ARLEN SPECTER is the sponsoring Senator, again, he doesn't know what he is talking about. This is a nominee by the President. This is a nominee by the President, and I have said that Judge Massiah-Jackson is entitled to a fair hearing and to have her side of the matter presented. That is, as a member of the Judiciary Committee, as a United States Senator and as a juror, who has to make a decision.

I am well aware of my oath of office. And I am well aware of my responsibilities to make an impartial judgment in this case. I said to the district attorneys who came to my office on January 23—and I repeated it earlier today—that I was interested in hearing what they had to say, but I will not make a judgment until I hear the reply of Judge Massiah-Jackson as a matter of basic fundamental fairness.

I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, the process of advise and consent in the U.S. Senate for judicial nominees is indeed an important one. We have had some tremendous debate already this afternoon. And we have had it on other nominees. The Senators that have spoken earlier today are outstanding Senators who deeply care about their work. And I respect them all.

I think it unfortunate that we may have crossed over into some personal matters that would not be normally displayed on this floor. But I think it is important what we are doing. I think it is commendable that people speak with passion about what they believe in.

A Federal judicial lifetime appointment is an important office. I served as an assistant U.S. attorney, a Federal prosecutor, for 2½ years. I served as a U.S. attorney, a Federal prosecutor, for almost 12 years. I practiced every day, full time, before Federal judges.

I respect and believe in Federal judges with great passion. I believe we ought to have the finest quality of people we can possibly have on the federal bench. I have tried, as I have participated in the Senate Judiciary Committee, as a member, to conduct myself in that committee with the highest levels of professionalism.

When this nominee came up, I had some concerns as a professional prosecutor. I had a feeling, an intuition, that there was something unhealthy about this nominee, that there was perhaps an unstated bias against prosecutors and law enforcement. We had a number of matters that indicated such a bias.

She testified well and gave some explanations. I concluded that we ought to vote no on the nominee. A number of other people, a majority, did not oppose the nominee. Her nomination came to the floor.

I think it is true, as Senator ASHCROFT has suggested, had he not put a hold on that nominee, she would be a Federal judge today. That was the direction we were heading. The vote was coming up. The committee had voted 2 to 1 in favor of that nominee.

The President has asked that his judges be voted on. I think he has a right to ask that, as it is a fair thing for the President to ask. But I think the President also recognizes that sometimes giving a little insight into it is important; otherwise we become nothing more than a rubber stamp or a potted plant. And I do not intend to do that. I have a responsibility. I serve on that committee. I care about the Federal judiciary, and I want good quality judges on the bench.

So that is where we are. I think one thing is important and instructive out of this entire process. Senator SPECTER and Senator SANTORUM and Senator BIDEN had a hearing in Philadelphia. They sought out comments. They did not receive any substantial negative comments. In defense of Senator SPECTER, at the hearing he volunteered to allow me to continue my questioning of Judge Massiah-Jackson beyond the normal time limit that I would have been given. I do not think there has been an attempt to suppress the truth.

What happens in situations like this, however, is that people hate to speak out against a person who has been nominated for a high position. They just do not like to do it. There is no fun in it. There is no pleasure to it. It is not a nice thing to have to do.

So what really happened was, after the hearing in which I questioned Ms. Massiah-Jackson, as did Senator SPECTER and Senator KYL and others, it was reported in the Philadelphia papers, apparently, that law enforcement officers, line prosecutors, who had been in the courtroom day after day in Philadelphia, the Philadelphia district attorney and others began to think about this, the prospect of this nominee being a full time, lifetime appointed Federal judge.

As a result of that, they made some decisions. They decided to come forward and express their true beliefs. Those opinions ought to be respected. I would say, in accord with Senator ASHCROFT, in my experience I have never seen the kind of unanimity of opinion in opposition to a nominee by a group of professional people who have associated with that nominee on a daily basis as I have seen in the case of this nominee.

The objections are bipartisan—Republicans and Democrats. The district attorney in Philadelphia is a democrat and is nationally known, Lynne Abraham. She is a true professional, a leader in a number of different activities for law enforcement, and has substantial credibility.

She wrote the Judiciary Committee, after our hearing, this letter. I will quote from it. You can listen because it is very carefully explained. She chooses her words very carefully. It is a significant opinion by a prosecutor in Philadelphia whose assistants practiced under this judge on a regular basis, who personally served as a judge with her on the bench at another point in time, a fellow colleague with her.

This is what she said. She first said she had never taken a position on a judge. She did not want to take a position on a judge, but she felt she had to. She said:

My position on this nomination goes well beyond mere differences of opinion or judicial philosophy. Instead, this nominee's record presents multiple instances of a deeply ingrained and pervasive bias against prosecutors and law enforcement officers and, by extension, an insensitivity to victims of crime. Moreover, the nominee's judicial demeanor and courtroom conduct, in my judgment, undermines respect for the rule of law and, instead, tends to bring the law into disrepute.

Ms. Abraham, a Democratic district attorney in Philadelphia, goes on to write:

This nominee's judicial service is replete with instances of demonstrated leniency toward criminals, an adversarial attitude toward police, and disrespect and a hostile attitude toward prosecutors unmatched by any other present or former jurist with whom I am familiar.

I say, Mr. President, that is a serious comment by a serious person about a nominee that they felt very deeply about. It was important that we hear it. Had that nominee not been held up over Christmas, and had it not been they had an opportunity to discuss it, we would not have heard that.

I submit this, too, that I have been a prosecutor that supervised a staff of attorneys. They talk about judges. You know who the judges are that are just a terror to work before. You know who the ones are that are always looking to undermine the case, to rule for the defendant.

A prosecutor, see, does not get to appeal most rulings on evidence. A motion of judgment of acquittal on a case is a final judgment. The prosecutor has no right to appeal. But a judge can rule

against the defendant, and the defendant has the right to appeal. So if a judge is not willing to give the prosecutor a fair trial, there are many times there is no recourse. A granting, for example, of a judgment of acquittal by a judge is an unreviewable order. They can take a case from the jury, declare there is not enough evidence there, and it is the same as if a jury had acquitted them. Double jeopardy applies and that sort of thing. So this is a problem. It is particularly a problem with a lifetime Federal appointment.

Other law enforcement officials share Ms. Abraham's concern. District Attorney John Morganelli of Northampton County, PA, also opposes the nomination of Judge Massiah-Jackson. Mr. Morganelli, who is also a Democrat, wrote last month that Judge Jackson's conduct is "unjudicial, improper, and illustrates a disdain for police and prosecutors." Those are his words, not mine.

Another district attorney from Pennsylvania, Bob Buehner of Montour County, also opposes the nomination. He wrote that Judge Jackson's "actions as a common pleas judge in Philadelphia have, at times, bordered on the outrageous. She has used profanity in her courtroom. What is even worse is her consistent, demonstrated exceedingly adverse attitude toward prosecutors and members of the law enforcement community."

That is what troubled me to begin with about this matter when it came up before the committee. We had the circumstance in which Judge Jackson in the courtroom, on the record, said to a female assistant U.S. district attorney: "Shut your 'F'-ing mouth."

Well, some may say people slip. They say things they ought not to say. But from what was said about that, it troubled me, from some of the other circumstances involved, that it indicates a lack of respect for the prosecutor, a lack of understanding that the prosecutor is a litigant, too, who represents the people of Pennsylvania and is entitled to the same protections of the law as is the defendant. That is what concerned me about it.

Now we have these letters from these professional law enforcement people in Philadelphia. They have seen this judge handle hundreds of cases, thousands of cases perhaps. Their assistants have been prosecuting there on a daily basis. They talk about what it is like to be in that courtroom. That is where we are today.

Let me say this. These are not just isolated comments of one or two prosecutors. In fact, on January 8 of this year, the Pennsylvania District Attorneys' Association officially and unanimously voted to oppose the confirmation of Judge Massiah-Jackson. The association found that Judge Jackson's record "indicates an attitude which is unusually adversarial toward police and prosecutors. Her record also indicates a tendency to be lenient with respect to criminal defendants."

In addition to the prosecutors, many police officers oppose the nomination of Judge Jackson. For example, the Philadelphia lodge of the Fraternal Order of Police announced their opposition to Judge Jackson last month. The Philadelphia lodge of the Fraternal Order of Police stated that:

Judge Jackson has an established record of being extremely lenient to criminals; insensitive to the victims of crime; and has posed a direct threat against police. Judge Jackson's bizarre rulings, coupled with her challenging and adversarial attitude toward police and prosecutors, make it appear she is on a crusade against public safety.

That is the Fraternal Order of Police there.

Now, even in a great city the size of Philadelphia, judges have reputations. Police officers know them. They know what kind of experience it is to appear before them. They know how a hostile judge can leave them hanging out to dry—and it can be a very tough day indeed—and what it is like to be before a fair and objective judge. I do not think that is a flippant comment. I think that represents a considered opinion of the police department, the police officers, the line police officers in Philadelphia.

Judge Jackson's nomination is so controversial that even the National Fraternal Order of Police has taken a stand and formally opposed her confirmation.

I would like to share with my fellow Senators some examples that demonstrate why these law enforcement people oppose Judge Jackson's nomination. While these are just a few of her decisions—many of which I firmly disagree with—I think they indicate some of the reasons why they would reach these conclusions and why she should not be confirmed as a judge.

In *Commonwealth v. Ruiz*, Judge Jackson acquitted a man accused of possessing \$400,000 worth of cocaine because she did not believe the testimony of the two undercover officers. In this case, Judge Jackson pointed out in the courtroom the two undercover officers, telling the onlookers "to take a good look at the undercover officers and watch yourself."

Well, some say, "Well, you know, maybe they shouldn't have been testifying. Maybe they would have been identified anyway. What harm did that do?"

I will tell you what troubled me about it, in addition to just the plain fact that it may have jeopardized the lives of line police officers. What went through my mind was, what would make her do that? Why would she do that? What kind of hostility or bias against police and law enforcement would cause her to go out of her way to identify police officers and tell others to watch out because they might come out to arrest you or catch you. That is what concerned me from the beginning about this case.

Detective-Sergeant Daniel Rodriguez, one of the undercover officers ex-

posed by Judge Jackson, had this to say: "I hope I don't ever have to make buys from anyone in this courtroom. They would know me but I wouldn't know them. What the judge said jeopardized our ability to make buys. And it put us in physical danger."

Now, the reason that is significant is in every sizable police department there are a number of police officers who, for a period of time, work in an undercover capacity. It is the best way to make a drug case because the one guy who sells drugs today is going to sell them tomorrow. You simply send somebody out pretending to be a drug dealer and put a tape recorder under his coat. He goes out to buy drugs from him and records it so it is not one person's word against another one. It is actually the drug dealer's recorded word and you can play that in court and the jury who hears it can feel like they are right there, know whether or not there was any entrapment. They will know everything that was said and they can make a decision whether this was a person who committed a crime.

These officers were undercover police officers. This was their responsibility—to go out on a regular basis to make cases. I don't know, maybe they are witnesses in other courtrooms there. Maybe there were other drug defendants there, maybe families of drug dealers who also dealt in drugs, who may have been of a violent nature. It made the police officer unhappy and it also made him afraid. He knew that if he ever tried to make an undercover buy from any of those individuals they would not deal with him and may even harm him.

Again, why would she do that? Why? What would make a judge do that—something I have never seen in my entire lifetime or practice of law as a prosecutor. By the way, we did ask about this matter and some of the others at the hearing, and she did have a chance to answer to them.

In addition, Judge Jackson made some very offensive comments to prosecutors in court. In *Commonwealth v. Willie Hannibal* she told an assistant United States attorney, as I said, "Will you shut your 'f-ing' mouth." When asked about this comment by the Philadelphia Inquirer, Jackson said, "Maybe I would suggest it offended [Ms. McDermott], but I can't imagine the defendant was offended."

Now, later, when the Judicial Inquiry Commission, the disciplinary commission of the Pennsylvania judicial system, disciplined her in some fashion she said she was sorry and she shouldn't have done it and she said that before our committee. But to the newspaper, her comments didn't reflect remorse to me, and in fact she said it may have made the prosecutor mad but it made the defendant happy.

It is the kind of odd approach to judging that I think is unhealthy. I believe it shows an insight into her attitude about law enforcement and criminal law that is very instructive.

She is also on record as using profanity in another instance in the courtroom.

Now, you would expect, perhaps, if my intuition is correct, that this is an anti-law enforcement judge, a person who is more concerned about the rights of criminals than about the rights of the victims, that it would show up in the sentencing tendencies of the judge. In this case it really does. In *Commonwealth v. Norman Nesmith*, the defendant was convicted of striking a pedestrian with his car, leaving her seriously injured in a gutter, fleeing the scene of the crime and beating into unconsciousness one of the woman's relatives who tried to thwart his escape. As usual, the defendant waived a trial.

You have a right to waive a trial by jury and be tried by the judge. Apparently, many people waive their jury trial early on in the system in Philadelphia and they don't know what judge is actually going to hear it and they are tried before a judge and not before a jury. They have a right to be tried by a jury if they demand it.

At any rate, this individual waived a trial by jury and asked to be tried by the judge herself. She sentenced him to 2 years probation for all seven convictions. The defendant had a long prior record for that offense.

In *Commonwealth v. Jerome Gray*, the defendant severely beat his girlfriend. The victim had cracked ribs, a collapsed lung, a ruptured spleen that had to be removed. After being released from the hospital the defendant threatened to kill her.

As usual, the defendant waived jury trial and was tried by Judge Jackson. He was found guilty of recklessly endangering another person, aggravated assault, second-degree and simple assault, and was sentenced to only 24 months probation.

In *Commonwealth v. Freeman*, the defendant shot and wounded another man in the chest because the defendant laughed at him. Judge Jackson convicted the defendant of a misdemeanor instead of a felony offense and sentenced him to 23 months, but then immediately paroled him so he did not have to serve any prison time.

In *Commonwealth v. Jenkins*, the police arrived at the scene of an armed robbery within minutes. They were given detailed descriptions of the robbers and told that the suspects had run north along the street. The descriptions were broadcast over the radio. Soon thereafter, other police officers arrested an individual matching the description 1½ blocks from the crime scene. When approached by the police, the suspect took a roll of cash from his pocket and threw it on the ground.

Amazingly, the judge ruled that probable cause did not exist to make the arrest or stop, and suppressed the stolen cash. She also suppressed the in-court and out-of-court identifications.

Now, police have a responsibility and a duty to be on the streets to try to protect us from crime. The Supreme

Court is clear, in my opinion, that these kind of stops by police officers when they have this kind of probable cause are constitutional. Here, the police saw the defendant throwing down a roll of money, he meets the description of a defendant, he is running a block and a half away—that is the kind of basis to make a stop. If we eliminate the ability of police to make that kind of good, heads-up police work because some judge says it violates the search and seizure law, we are in real trouble. The law does not say that is illegal. In fact, the Supreme Court of the United States, and I am sure the Supreme Court of Pennsylvania, holds regularly that those kind of searches with probable cause are legitimate and constitutional.

In *Commonwealth v. Hicks*, the defendant was charged with robbery, theft, receiving stolen property, aggravated assault and simple assault. The defense made a motion for continuance because a police officer that the defense had called did not show up to testify, even though he had been subpoenaed. Judge Jackson ruled that the officer was under the State's control and forced the prosecution to dismiss or nolle pros the case. When the prosecution refused to nolle pros the case, she dismissed the charges.

Judge Jackson's order dismissing that case was reversed by the appellate court and the charges were reinstated. The appellate court noted that the prosecution was ready to try the case, the prosecutor was ready to try the case. What wrong had he or she done? The only motion before the court was a defense request to continue the case until he got his witness there. Judge Jackson could simply have granted the motion by the defendant to continue the case instead of dismissing the charges.

Prosecutors don't like to resist judges. They have to practice before them on a regular basis. It is something that they have to do. I say, from my reading of those facts, that that prosecutor was probably a young person not long out of law school, hustling to handle a whole bunch of cases, and just would not knuckle under. He was not going to nolle pros that case because there was no basis for it. Why would she dismiss it and cause the State to go to the incredible expense of appeal is not rational to me. It does not suggest that we have an even-handed justice in Judge Jackson's courtroom. In fact, just the opposite.

Mr. President, there are a number of other things that we could say about this with regard to sentences. I asked Judge Jackson about this at the Judiciary Committee hearing. The State of Pennsylvania has some sentencing guidelines. They are pretty broad. They are not as strong and not as tight as the Federal guidelines but they are significant. You carry a gun during the commission of a crime, you have another 5 years you have to serve. It has to be 5 years for that gun, regardless. If

you are convicted of aggravated assault, felony-one, then you are looking at 10 to 20 years in jail.

Under the sentencing guidelines, according to her own numbers presented by Judge Jackson, she departed from the sentencing guidelines twice as much as other judges in Philadelphia. What I don't think those numbers show and what would make them even more dramatic, they don't show the instances that appear to be so regular in which she convicted the defendant of a lesser offense than which he was charged.

The District Attorney's Association have provided some 50 cases that show, time and time and time again, that this judge convicted the defendant on a lesser offense than what they were charged when it would seem it was almost impossible for the defendant not to be convicted on a higher and more serious offense.

For example, *Commonwealth v. Sprewall*, the defendant ordered a friend to shoot the victim but the friend refused. The defendant took the gun from the other defendant's hand. The defendant's brother then tried to stop the defendant, but he pushed away his brother and fired over five shots at the fleeing victim, hitting him in the stomach, thigh, buttocks and leg. The victim slipped in and out of consciousness when he was admitted to the hospital where he spent 3 weeks. One of his toes had to be amputated and he had to use a colostomy bag for 10 months following surgery. Despite this plain evidence of serious bodily injury, in Philadelphia if you commit an aggravated assault that causes or attempts to cause serious bodily injury then you have been convicted of felony 1, 10 to 20 years.

An injury is defined as serious if it causes the protracted impairment or loss of a bodily member, organ, serious or permanent disfigurement, or a substantial risk of injury. The classic example of aggravated assault in a first-degree felony is the shooting of a gun at a person. You don't even have to hit him. If you were trying to then you are attempting to cause serious bodily injury. This person was hit a number of times.

Despite this plain evidence of serious bodily injury, the judge convicted the defendant of only felony 2, aggravated assault, causing nonserious injury, on the dubious theory that there might have been more than one shooter and that the defendant's intent to cause serious injury was somehow in doubt. Thus, the court aborted having to impose the 5-year mandatory minimum sentence for felony 1 aggravated assault. The judge then sentenced the defendant from 15 to 30 months, one-quarter of the minimum required sentence that he would have faced had he been convicted under the more serious offense.

According to the report, it goes on to say that had this defendant been sentenced to the mandatory minimum of 5

years imprisonment, using a gun, that he would still have been serving his sentence in 1993 when he was at that time arrested again for gunpoint robbery, and he would have been in jail in 1994 when he was, again, on two occasions, arrested for gunpoint robbery.

In another case, the defendant shot the victim, hitting him in the chest and back. The victim had to undergo emergency surgery and spent 2½ weeks in the hospital with the first 3 days in intensive care. Despite this clear evidence of a felony-one aggravated assault, the court found the defendant guilty of only second-degree aggravated assault. The defendant was then sentenced to 2½ to 5 years instead of at least the minimum sentence of 5 to 10 years.

I think I misspoke. I believe the minimum sentence under a felony-one sentence would be 5 to 10 years, instead of 10 to 20.

I will not continue to discuss those cases, but there are many of them. There are some 50. They are replete with just these kinds of circumstances in which serious cases are reduced and the defendant is found guilty on a lesser charge. For the most part, a judge's decision to do this is unreviewable; that is, there is no way the prosecutor can appeal because the failure to convict on the more serious charge is an acquittal on that charge. And the judge being the finder of fact, jeopardy attaches. That is a final judgment.

Under the double jeopardy clause of the United States Constitution, and I am sure the Pennsylvania Constitution, criminal defendants can't be tried again for that same offense. So it is over. That is a final decision. So the judge has this unreviewable power. Some people do not realize what the power of a judge has. They have this unreviewable power to make certain findings of fact that can never be reviewed. And the prosecutor and the victims in separate and subsequent offenses have to live with that. There is nothing they can do. You can't sue a judge. They have immunity. Judge Learned Hand said this about Federal judges: "There is nothing they can do to us. They can't fire us, and they can't even dock our pay."

So we are considering this nominee who has a lot of good friends and has been actively involved in her community. I am not saying anything about that. I am just saying that I am confident, based upon my review of this record, that this nominee has an unhealthy bias against law enforcement. It is the kind of bias that I must say is disqualifying. It suggests that she ought not to be confirmed to a lifetime appointment. At least in Philadelphia she has to come up for election or review and can be removed from office if she continues to act in a way that is arbitrary and capricious and unjustified. But when we appoint somebody as a Federal judge, then they have it for life.

Let me say this: It is a difficult task. It is an honor to be nominated. I know

this is not a pleasant thing for Judge Massiah-Jackson to go through. She is still a State judge, and will be able to continue as that. And perhaps this will cause her to reevaluate whether or not she has been objective in this process of handling criminal cases. If so, then some good will come out of that.

I respect the Senators from Pennsylvania. This is not their nominee. This is the President's nominees. He chose this nominee. He had background checks done on this nominee. He is the one that submitted this name to the U.S. Senate. He asked us to vote on it. I am ready to vote. If people feel like we need another hearing to talk some more about it, so be it. I am ready to vote. The President asked us to vote. I am prepared to vote, and I am prepared to vote no.

Thank you, Mr. President.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, let me congratulate the Senator from Alabama for his professional discussion of today, and I think that the Senator from Alabama has raised questions which require an answer. I think that we will give Judge Massiah-Jackson an opportunity to respond to the questions which the distinguished Senator from Alabama has raised.

Mr. SESSIONS. Mr. President, will the Senator yield?

Mr. SPECTER. I do.

Mr. SESSIONS. I would like to say that whereas I concluded at the hearings that this nominee had these kind of tendencies based on what I saw, a majority of the committee did not agree with that, and we did not have the overwhelming amount of evidence that we have now. I say that in all due respect to the Senator from Pennsylvania. He had a hearing in Pennsylvania. These things did not come up at that time. I understand. I don't criticize the district attorneys and the police. They don't like to be involved in this. But I think they had to. They felt they had to come forward, and they did. I think it is time now for us to do our job. I wanted to say that in respect to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I understand that the Senator from Alabama voted against Judge Massiah-Jackson at the committee level and had raised questions about Judge Massiah-Jackson so that he felt those questions were sufficient at that time for him to make his judgment. I respect his judgment. He has raised quite a number of additional questions today. And when he cites these cases about making a finding of a lesser included offense, he accurately states the law that those matters are not reviewable, that is the conclusion of the case.

On a number of other matters which he has raised, those matters are reviewable; that where Judge Massiah-Jackson has made the decision to suppress evidence, that is a reviewable matter. So when she makes that judg-

ment, her decision can be overturned. And where she made the judgment to order a nolle prosequi of a case, that was subject to review as well.

When the Senator from Alabama was present at the hearing, we discussed a number of those cases. We have both been prosecutors. We know the evidentiary rules, and some matters may be reviewed. Judge Massiah-Jackson made quite a number of judgments which were subject to review, and on a good many of them she was upheld.

When the Senator from Alabama raises questions about what the police community has stated, I understand that and respect that.

We received one letter from the Grand Lodge of the Fraternal Order of Police citing a case where Judge Massiah-Jackson did some things that they write to disagree with. On that particular case, it went for appellate review, and the Appellate Court of Pennsylvania upheld Judge Massiah-Jackson. So the issue would be that these police officers and police officials will have an opportunity to testify about the specifics as to their judgment or whether their judgment might differ if they knew what had happened on appeal in the case.

When the Senator from Alabama talks about "why will the judge identify police officers in court," that is the case referred to by Senator HATCH earlier where those officers have already testified in court.

In raising questions about why Judge Massiah-Jackson would take action in a variety of contexts, I think those are fair and appropriate questions. I think those questions are appropriate for Judge Massiah-Jackson to have an opportunity in which to respond. To the credit of the Senator from Alabama, when we had the hearing, he was there and he was asking those questions.

I think it is not irrelevant to comment that there have been a number of convictions of police officers in the Federal court in Philadelphia recently for falsifying evidence in drug cases. Several hundred cases have been dismissed by the District Attorney of Philadelphia. The city of Philadelphia has paid out some \$11 million in damages where you deal in a certain context and certain sections of a big city like Philadelphia. It may differ from some other communities. I came to Philadelphia from Russell, KS, and the differences were absolutely gigantic.

When I was District Attorney in Philadelphia for 8 years after being assistant DA for some 4 years, I had many very strong disagreements with the judges. In one case, I was held in contempt of court in my battle on a sentence on a narcotics case, Commonwealth v. Arnold Marks. I still remember it. It only happened 28 years ago—4 ounces of pure, uncut heroin. And I thought the sentence was insufficient. I battled with the judge.

The judges in Philadelphia when I became DA used to come to court late and leave early. I sent my detectives

into court to write down the time they arrived and the time they left for lunch and the time they got back and the time they quit. Very frequently, court was supposed to run 10 to 12:30 and 2 to 4—4½ hours on the bench, not a straining schedule. But they had jobs to do in chambers. But the common practice was to arrive a few minutes before 11, work to about 12:10, come back at 2:50 and leave about 3:20. So I sent detectives in to court to write down the times.

Soon thereafter, one of my detectives was held in contempt. I went down to the court. I said to the judge, "You can't hold him in contempt. I did the order." I was the District Attorney. "If you are going to hold anybody in contempt, you have to hold me in contempt. You can't hold me in contempt because anybody can come in open court and write down the times you come and go."

Later, I got the Chief Justice of Pennsylvania to issue an order that judges had to sit from 9:30 to 5. We petitioned for reconsideration of sentences.

This business about battling with the judge is something a District Attorney has to do. That is the appropriate role of a public prosecutor. When the District Attorneys have raised questions, I think that is within their rights. The police officers have raised questions. I think that is within their rights.

But let's hear what Judge Massiah-Jackson has to say. The Senator from Alabama raised a number of questions. He can't understand why a judge would do that. And it is a little different milieu. Let us hear what she has to say. When we have all the facts, I consider myself, as I said earlier, a juror. I have taken an oath as a U.S. Senator and as a juror. I am prepared to hear both sides and to make a judgment. I think the hearings will be held in the light of day. There will be full disclosure. There is ample opportunity for public scrutiny, as there should be, and we will make the determination on the facts and on the merits as to whether this nominee should or should not be confirmed.

I thank the Chair.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to associate myself with the remarks of my colleague from Pennsylvania. I too feel that we here in the Senate, when it comes to justice, really should be jurors, and that we should get all the information. The information shared, I think, as correctly stated by my colleague from Pennsylvania and by the Senator from Alabama, was well presented. But that is information that we received from the District Attorneys Association opposed to her nomination, without any rebuttal or explanation from Judge Massiah-Jackson. I will admit that some of those cases I find it hard to find out what a

good explanation would be. But that is not for me to prejudge, nor as a juror should you prejudge those things.

So I am willing to listen. I think she needs to be given an opportunity.

The leader has not been on the floor since we brought up this nomination. I am not too sure that we are going to get a resolution today as to how to proceed with her nomination. But I am hopeful that either this evening or sometime tomorrow we will be able to come up with a plan on how we are going to proceed with her nomination and have her nomination received in a fair fashion.

Again, I respect her. I think Senator HATCH and Senator LEAHY mentioned that a hearing by the Judiciary Committee would accord the judge an opportunity to face this new information and respond to it, and give the police and the prosecutorial community an opportunity to present such evidence and such testimony to the committee that they believe is important for us to consider.

So I hope that a full committee hearing goes through, if necessary. I am not on the committee. So I can charge them with whatever I please because I don't have to sit through it; but at least take a number of these cases as a representative sampling of these cases and go through them one by one and make a determination as to the justification that Judge Massiah-Jackson had in making these decisions.

So I am hopeful that that is the next order of business, that somehow or other we can come to some accommodation with the leader, who I know wants to vote on this nominee as quickly as possible in response to the President's urgings of up-or-down votes on his judges. I know that many here, as you heard, would like to vote on this judge today. We are not going to vote on this judge today. Senator SPECTER and I don't want to vote on this judge today, and I believe there are many Members on the other side of the aisle who don't want to vote on this judge today. But we would like the judge to be given a chance and then to have a vote. Let's let the string run out, if you will, give her an opportunity to respond, have a vote somewhat promptly thereafter, and then let the Senate act as the jury, which we know it is very good at doing.

Mr. President, with that I will yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE VOTE ON MOTION TO PROCEED TO THE CONSIDERATION OF S. 1601

Mr. KENNEDY. Mr. President, tomorrow the Senate will cast one of the most important votes on health care in this Congress, and perhaps of this decade. That vote will determine whether one of the most promising avenues of research against a host of serious diseases will continue, or whether Congress will act to ban it—and condemn millions of Americans to unnecessary death and disability.

The vote that will occur is on a cloture motion to take up S. 1601. The authors of S. 1601 say that it is a bill to ban the production of human beings by cloning—an attempt to stop Dr. Seed and other unscrupulous scientists in their tracks.

But that claim cannot pass the truth in advertising test. S. 1601 goes far beyond a ban on the cloning of human beings, which we all support. This legislation also bans the use of the technology for any purpose, even though the research would be used to create cures for cancer, diabetes, spinal cord injuries, arthritis-damaged joints, birth defects, and a host of tragic diseases such as Alzheimer's disease, Parkinson's disease, Lou Gehrig's Disease, multiple sclerosis, and many other serious illnesses. It is not necessary to ban all of this important life-saving research in order to achieve our goal of banning the cloning of a human being.

Every scientist in America understands the threat this legislation poses to critical medical research.

Every American should understand it, too. A vote against this bill is a vote for medical research. It is a vote for millions of Americans suffering from serious diseases for whom this cutting-edge technology offers hope of new and miraculous cures.

A vote against this bill is certainly not a vote in favor of cloning human beings. Congress can and should act to ban the cloning of human beings. But we should not pass legislation that goes far beyond what the American people want or what the scientific and medical community says is necessary and appropriate.

It should also be clear to everyone that there is absolutely no need to act tomorrow to prevent cloning of a human being.

No reputable scientist wants to clone human beings. Scientifically, it cannot be done yet. And the FDA, which has jurisdiction over this area, has made it clear that it has both the authority and intention to prevent any human cloning until further research is done. I ask unanimous consent that a letter from FDA making this point be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows: